

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



RIO HONDO FACULTY)	
ASSOCIATION, CTA/NEA,)	
)	
Charging Party,)	Case No. LA-CE-1157
)	
v.)	Request for Reconsideration
)	PERB Decision No, 279
RIO HONDO COMMUNITY)	
COLLEGE DISTRICT,)	PERB Decision No. 279a
)	
Respondent.)	May 16, 1983

Appearances: Charles R. Gustafson, Attorney for Rio Hondo Faculty Association, CTA/NEA; Patrick D. Sisneros, Attorney (Wagner, Sisneros & Wagner) for Rio Hondo Community College District.

Before Jaeger, Morgenstern and Burt, Members.

DECISION

JAEGER, Member: The Public Employment Relations Board (PERB or Board), having duly considered the Rio Hondo Community College District's (District) request for reconsideration pursuant to PERB rule 32410(a)¹ hereby grants that request in part consistent with the discussion below.

¹PERB rules are codified at California Administrative Code, title 8, section 31001 et. seq. PERB rule 32410(a) provides:

(a) Any party to a decision of the Board itself may, because of extraordinary circumstances, file a request to reconsider the decision within 20 days following the date of service of the decision. An original and 5 copies of the request for

DISCUSSION

The Underlying Decision

In Rio Hondo Community College District (12/31/82) PERB Decision No. 279, the Board found that the District violated subsections 3543.5(b) and (c) of the Educational Employment Relations Act (Act) when it made unilateral changes in various departments of the college. Specifically, the Board found that the District made the following unlawful unilateral changes: (1) it increased the caseload of Cooperative Work Experience (CWE) instructors when it raised the number of students initially assigned to each instructor from 125 to 140; (2) it altered the method of computing pay for summer school instructors in the public service department by making all instructors 10-month employees and paying them an hourly wage for summer school instruction; (3) it increased the size of certain courses in the business services department; and (4) it

reconsideration shall be filed with the Board itself in the headquarters office and shall state with specificity the grounds claimed and, where applicable, shall specify the page of the record relied on. Service and proof of service of the request pursuant to Section 32140 are required. The grounds for requesting reconsideration are limited to claims that the decision of the Board itself contains prejudicial errors of fact, or newly discovered evidence or law which was not previously available and could not have been discovered with the exercise of reasonable diligence.

altered the compensation formula for physical science "field studies" course instructors. The Board dismissed a charge alleging that the District had unlawfully required CWE instructors to teach "career development" courses. The Board ordered the District to cease and desist from making unilateral changes, to restore the status quo, and to pay back wages to affected employees from the date of the unlawful conduct to the present.

Grounds for Request

1. Increase in Workload of CWE Instructors

The District argues that the record does not support the Board's finding that the increase in the number of students initially assigned to each CWE instructor from 125 to 140 students actually increased the caseload of those instructors. The District disputes the Board's reasoning that, since each CWE instructor was required to make initial contact with all of the students initially assigned to him or her, an increase in that number would increase the number of initial contacts required from 125 to 140, and that such an increase resulted in a change in the workload of CWE instructors.

To demonstrate that reconsideration is warranted under PERB rule 32410, the petitioner must demonstrate the existence of "extraordinary circumstances." Livermore Valley Joint Unified School District (10/21/81) PERB Order No. JR-9. Since the District merely reasserts an argument previously considered and

rejected by the Board in the underlying decision, no extraordinary circumstances justifying reconsideration exist. Accordingly, the District's request for reconsideration of this issue is denied.

2. Change in Class Size/Business Department

The District asserts that the Board erred in finding that it unlawfully increased the class size of certain courses in the business department. Once again, it merely restates its argument that certain pieces of documentary evidence establish that no change was made in class size. In the underlying decision, the Board found that the preponderance of the evidence indicated that class size was, in fact, increased.

Since the District merely reasserts an argument considered and rejected by the Board, it demonstrates no basis upon which reconsideration of this issue should be granted. Therefore, the District's request for reconsideration of this issue is denied.

3. Change in Computation of Pay/Public Service Department

In the underlying decision, the Board found that the past practice in the District had been for full-time employees who taught summer school to be paid by continuing their full-time salary during the summer session. In 1980, all employees were paid on a 10 month basis, with those employees who taught summer school being paid on an hourly or overload basis for summer school courses.

In its amended charge, the Association alleged that "The District unilaterally changed the work year for 1980-81 in the Public Service Department. . . ." The District asserts that nowhere in the Association's unfair practice charge is it alleged that the District changed the computation of pay, and that the Board erroneously found a violation which was not encompassed by the Association's unfair practice charge.

The District's argument is without merit. Although the Association's charge does characterize the District's conduct as a change in "work year" or "calendar," the manner in which the Association set forth its argument in its briefs and presented its case at the hearing clearly indicates that its concern was with the District's modification of the salary schedule of summer school instructors. The District was, therefore, fully on notice of the thrust of the Association's charge.² Accordingly, we find no basis upon which to grant reconsideration on this issue. The District's request is denied.

4. The Remedy

The Board ordered that the District make affected employees whole from the date of the unlawful conduct "to the present."

²In any event, the Board has long held that it may resolve Unalleged violations where the issue has been fully litigated by the parties. Santa Clara Unified School District (9/26/79) PERB Decision No. 104; Modesto City Schools (3/8/83) PERB Decision No. 291. There is no question that the issue of the District's unilateral change in the wages of summer school instructors was fully litigated.

The District urges the Board to take into account subsequent negotiations between the parties which resulted in a 1981-83 collective bargaining agreement.

Subsection 3541.5(c) of the Act empowers the Board "to issue an order directing an offending party to . . . take such affirmative action . . . as will effectuate the policies of [the Act]." The Board has previously found that where a remedy will not effectuate the purposes of the Act, reconsideration is justified. Delano Union Elementary School District (10/15/82) PERB Decision No. 213a.

The intent of the Board's order was to remedy the District's refusal to negotiate prior to taking unilateral action with regard to the wages, hours, and working conditions of bargaining unit members. To the extent that the District reached agreement with the Association concerning the conduct found to be unlawful, it has fulfilled its obligation, and a remedy failing to take into account the existence of the negotiated agreement does not effectuate the purposes of the Act. Accordingly, we grant the District's request for reconsideration of the remedy, and modify our order to permit termination of the back pay award at the date upon which the parties reach agreement or impasse.

ORDER

The Order in PERB Decision No. 279 (12/31/82) is AMENDED to read as follows:

Upon the foregoing findings of fact and conclusions of law and the entire record in this case and pursuant to Government Code section 3541.5(c), it is hereby ORDERED that the Rio Hondo Community College District, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Failing and refusing to meet and negotiate in good faith with the exclusive representative by taking unilateral action on matters within the scope of representation, as defined in section 3543.2, and specifically with respect to:

(a) Increasing the number of registered students for Cooperative Work Experience instructor/coordinators from 125 to 140.

(b) Altering contract terms for instructors in the public services department.

(c) Increasing maximum class size of specified courses in the business department.

(d) Altering the formula for compensating physical sciences field studies instructors.

2. Denying the Rio Hondo Faculty Association its right to represent unit members by failing and refusing to meet and negotiate about matters within the scope of representation.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE PURPOSES OF THE EDUCATIONAL EMPLOYMENT RELATIONS ACT:

1. Rescind the requirement that Cooperative Work Experience, instructor/coordinators maintain a caseload in

excess of 125 registered students. Pay to Vince Glenn and Irene Portillo overload compensation for all registered students in excess of 125 from the spring semester 1980 to the present or until the parties reach a negotiated agreement or impasse as to this issue, whichever is sooner. If an instructor has had a classroom assignment in addition to his/her caseload, he/she shall qualify for overload pay with a proportionally reduced caseload, consistent with existing policy. Such payment shall include 7 percent per annum interest.

2. Rescind the requirement that public services department instructors' salaries be on a 10-month contract with payment for the summer classes to be made on the summer school scale. Pay all public services department instructors compensation for summer school employment from 1980 to the present or until the parties reach a negotiated agreement or impasse as to this issue, whichever is sooner, on the basis of such instructors having had a regular year contract for all courses taught rather than a separate summer school compensation rate for summer school courses. Such payment shall include 7 percent per annum interest.

3. Rescind the policy which increased the maximum number of students permitted to register during the registration period in the Introduction to Accounting and Principles of Accounting A & B courses. The maximum shall be

returned to the level maintained prior to spring 1979. Pay to all District instructors of Introduction to Accounting and Principles of Accounting A & B courses overload pay for all students registered in excess of the maximum class size prior to such spring semester 1979, from the spring semester 1979 to the present or until the parties reach a negotiated agreement or impasse as to this issue, whichever is sooner. Such payment shall include 7 percent per annum interest.

4. Rescind the policy which altered the formula for compensating physical sciences field studies instructors, and pay to affected employees the difference between the former rate of pay and the altered rate of pay for any losses due to the District's unlawful conduct, from the spring semester 1980 to the present or until the parties reach a negotiated agreement or impasse as to this issue, whichever is sooner. Such payment shall include 7 percent per annum interest.

Within five (5) workdays after the date of service of this final decision in this matter, post at all work locations where notices to employees customarily are posted, copies of the Notice attached as an Appendix hereto signed by an authorized agent of the employer. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that the copies are not altered, reduced in size, defaced or covered with any other material.

Within twenty (20) consecutive workdays from the service of this decision, notify the Los Angeles regional director of the Public Employment Relations Board in writing of the steps the employer has taken to comply with the terms of this Order. Continue to report in writing to the regional director periodically thereafter as directed. All reports to the regional director shall be served concurrently on the charging party herein.

C. All other charges are hereby DISMISSED.

Members Morgenstern and Burt joined in this Decision.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California

After a hearing in Unfair Practice Case No. LA-CE-1157 Rio Hondo Faculty Association, CTA/NEA v. Rio Hondo Community College District, it has been found that the Rio Hondo Community College District violated the Educational Employment Relations Act. As a result of this conduct, we have been ordered to post this Notice, and we will:

A. CEASE AND DESIST FROM:

1. Failing to negotiate in good faith with the Association by:

(a) Increasing the number of registered students for Cooperative Work Experience instructor/coordinators from 125 to 140.

(b) Altering the contract terms of instructors in the public services department.

(c) Increasing the maximum class size of courses in the business department.

(d) Altering the formula for compensating physical sciences field studies instructors.

2. Denying the Rio Hondo Faculty Association, CTA/NEA its right to represent unit members by failing to negotiate in good faith with the Association.

B. TAKE THE FOLLOWING ACTIONS:

1. Rescind the requirement that Cooperative Work Experience instructor/coordinators maintain a caseload in excess of 125 registered students.

2. Pay to Vince Glenn and Irene Portillo overload compensation for all registered students in excess of 125 from the spring semester 1980 to the present or until the parties reach a negotiated agreement or impasse as to this issue, whichever is sooner. If an instructor had a classroom assignment in addition to his/her caseload, he/she shall qualify for overload pay with a proportionally reduced caseload, consistent with existing policy. Such payment shall include 7 percent per annum interest.

3. Rescind the requirement that public services department instructors' salaries be on a 10-month contract with payment for the summer classes to be made on the summer school scale.

4. Pay to all public service department instructors compensation for summer school employment from 1980 to the present or until the parties reach a negotiated agreement or impasse as to this issue, whichever is sooner, on the basis of such instructors having had a regular year contract for all courses taught rather than a separate summer school compensation rate for summer school courses. Such payment shall include 7 percent per annum interest.

5. Rescind the policy which raised the maximum number of students permitted to register during the registration period in the Introduction to Accounting and Principles of Accounting A & B courses. The maximum shall be returned to the level maintained prior to spring 1979.

6. Pay to all District instructors of Introduction to Accounting and Principles of Accounting A & B courses overload pay for all students registered in excess of the maximum class size prior to spring semester 1979, from the spring semester 1979 to the present or until the parties reach a negotiated agreement or impasse as to this issue, whichever is sooner. Such payment shall include 7 percent per annum interest.

7. Rescind the policy which altered the formula for compensating physical sciences field studies instructors.

8. Pay to all affected physical sciences field studies instructors the difference between the former rate of pay and the altered rate of pay, from the spring semester 1980 to the present or until the parties reach a negotiated agreement or impasse as to this issue, whichever is sooner. Such payment shall include 7 percent per annum interest.

Dated: _____

RIO HONDO COMMUNITY COLLEGE DISTRICT

By _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED BY ANY MATERIAL.